

**Transcript of Remarks by Senator Kent Conrad, D-ND,
at Press Conference on Tax Return Provision in Omnibus Bill
November 22, 2004**

As you know on Saturday, my staff discovered buried in this mountain of paper – some 3,500 pages, it is the omnibus appropriations bill, it was only made available to most of us starting at 6:00 a.m. on Saturday – a provision that would have allowed agents of the Chairman of the Appropriation Committee in the House or the Senate to review the tax return of any American, and they would also have had the power to release the information contained in that return without any civil or criminal penalty for the release of that private information. That is an extraordinary egregious potentially abusive provision.

As I say, we only discovered it on Saturday. Thank goodness we did because if it hadn't been discovered it would be the law of the land upon the signature of the President. Now, here is the language, and I know that some have found it hard to find. The reason is, very understandable that it's hard to find, because you have 3,600 pages here. It's on page 1,112. There are actually three page numbers on the page.

I was asked by Senator Craig Saturday night, 'What's the page number?' I had to tell him, you know, it's hard to know what page number. You have three page numbers on a page, but we now know it's page 1,112, section 222. "Notwithstanding any other provision of law governing the disclosure of income tax returns or return information, upon written request of the Chairman of the House or Senate Committee on Appropriations, the Commissioner of the Internal Revenue Service shall hereafter allow agents designated by such Chairman access to Internal Revenue Service facilities and any tax returns or return information contained therein."

Now, I must say, I was shocked to see that language. I knew that it contained the potential for abuse and I was relieved that my colleagues responded as strongly as they did Saturday night. Although some wanted me to allow this to become law – pass the Senate, get signed by the President, and, then take action at a later time – I would not accept that. I said to my colleagues, 'No, this can never become law. That is too dangerous.'

You think of what could be done here. You think of what could be done. Any agent of the Chairman of the Appropriations Committee, and they could designate anybody as an agent, could go into IRS facilities anywhere in the country and get your tax return. You write a story they didn't like, they could get your tax return, and they could have released that to the public without any criminal or civil penalty. They could have taken a tax return of any editor of yours, of any producer. They could have taken a tax return of the owners of any newspaper or any news service in America, gotten your tax return information and released it to the public without any penalty. They could have done that to anybody in public life. They could have done that to the supporters of those in public life or their opponents. That's serious business.

So when I read this morning in the *New York Times* the statement of Mr. Istook who apparently was behind this provision being included, and he said, "nobody's privacy was ever jeopardized." The only thing wrong with that statement is it's not true. Of course, people's privacy would have been jeopardized under such a provision. Whatever Mr. Istook intended –

and I don't know his intention.

I take Senator Stevens at his word that he didn't even know this provision was in here, Chairman of the Senate Appropriations Committee. I take Congressman Young at his word that he would never have used it in an abusive way. That's not the point. They are not going to be Chairmen forever. This would have provided unfettered power to the Chairmen of the Appropriations Committees now and in the future to assign agents to go review people's tax returns and reveal them to the public without any civil or criminal penalty.

He says, "nobody's privacy was ever jeopardized." I tell you if this would have been the law of the land I believe people's privacy would have been jeopardized. I believe whether they intended it or not, once they discovered the power that they had, at some point people's privacy would have been jeopardized, and this could have been an extraordinarily serious abuse of power.

Spokesman for the House Appropriations Committee, a Mr. Scofield said that the purpose of the provision was to allow investigators for the top lawmakers responsible for financing IRS to have access to that agency's offices around the country and tax records so they could examine how the money was being spent. That's very curious. That's very curious I would say.

You don't need access to the individual tax returns of the American people to determine how the IRS's money is being spent. You can look at the summary data. You can look at the actual expenditures. All of those are available to the Appropriations Committee now. You don't need some whole new, unfettered access to the individual tax returns of people or of companies in order to figure out who the IRS is spending its money. So this claim that is was for oversight purposes I don't think that stands up very well under much scrutiny.

And if you look at the words, the words are absolutely clear. This isn't talking about just tax records. It very specifically says, "any tax returns." Any tax returns, any individual's tax returns, any company's tax returns. And because of the first clause, "Notwithstanding any other provision of law governing the disclosure of income tax returns or return information..." That swept aside all of the provisions that are in law now to protect the privacy of individuals and of companies. That swept them all aside.

You know, right now, the Chairman of the Finance Committee, the Chairman of the Ways and Means Committee, are the only one authorized to see tax returns. They are in charge of the committees that have responsibility for tax policy. But they are under very stringent penalties, both civil and criminal if they were ever to release such information. This provision totally took away those protections.

For those in the House who are responsible for this provision to still be defending it, claiming nobody's privacy was jeopardized, I think doesn't stand up under much scrutiny. And this was not just limited to Congressional staff. The Chairmen of these committees could have made anyone their agent. They could have made the Republican National Committee their agent, and they could have gone and insisted on the tax return of any individual, of any group, of

any company, and made it public without any criminal or civil penalty. This language would have created permanent authority, not just for these Chairmen of the Appropriations Committee, but any future Chairmen, to comb through the tax returns of any American and release them without any penalty or sanction.

As egregious as that provision was and is, I am satisfied now that it is going to be removed. It will never become law and it will never become law because some of us absolutely insisted that this was not going to become law. This bill is not going to go forward unless this provision were dropped.

But you know it points out a bigger truth. The bigger truth is this stack of paper was dropped on people's desk at about 2:00 on Saturday, and we were voting about six hours later. What else is in this? What else is in this stack of paper that nobody knows about? We had on the floor of the Senate the Chairman of the Appropriations Committee saying he didn't know that provision was in there. I believe him. I believe he didn't know. But what else is in here that people don't know about?

In 1988, President Reagan in his state of the union message warned members against this approach. You'll remember his speech. He talked about a bill that was 1,200 pages in length, and we had only three hours to review. He said don't ever do this again. If you send it to me, I won't sign it. The President was right. This practice needs to stop.

Nine bills all wrapped into one, dumped on members' desks at about 2:00 in the afternoon on Saturday with a vote at 8 or 9:00. Very little chance to review, in fact, I had many staff members combing through this bill trying to find things, trying to understand what was in it. There is no earthly way – I don't care how outstanding one's staff is – that you can go through this. And, this is printed on both sides of the page, if this was just a single side, it would be a stack twice as big. Nobody, it is beyond the ability of human beings to go through that in six hours and figure out what's in there. This practice has got to stop. And, I'm calling on my colleagues to stop.

Finally, there's an insertion in the article this morning by Mr. Istook's spokesman that the IRS wrote this provision. I want to know who at the IRS wrote this provision. I want to know who at the IRS is responsible for writing this provision because they need to be called on the carpet. To write a provision that would open up every American's tax records and allow their release without criminal or civil penalties to protect their privacy is an outrage. And, anybody who wrote that provision at the IRS – if it's true, Mr. Istook's spokesman claims it's true – that person needs to be identified and held to account because that is beyond the pale.

I would be happy to answer any questions people might have.

Question: Can you give us a little color of what was going on at 6:00 a.m. Saturday morning. How you divided the document up? How your staffer found it? And how the message got transmitted to you and the rest of the Senate?

Conrad Answer:

First of all it was first made available to us at about 6:00 a.m. on the web. Unfortunately, the way you had to access it was to download it page by page. When you are downloading 3,600 pages, that takes a lot of time. We didn't get a hard copy until after noon. And, my staff was going through it, and one of my staffers, Steve Bailey who is tax expert on my Budget Committee staff, found this provision, wrote me a note and said this provision is stuck in this bill, and it was put in I was told at about midnight the night before and I was handed this as I was going into the caucus at 3:00.

In the caucus I asked for recognition, and I told my colleagues my staff has identified this provision as being in the bill. I said, you know, you think about what this could mean. You think about the ability to abuse this.

Whatever Mr. Istook intended, I don't know. I can't know that. I know what this bill did. I know what this provision would have allowed. It's clear as a bell. It would have allowed any American's tax return to have been reviewed an agent of the Appropriations Committee's Chairmen and released to the public without any protection. No civil law violation or criminal law violation for releasing that private information. That's what this provision would have done.

My colleagues immediately understood the implication. A number of us were asked to go meet immediately with Senator Frist and Senator Stevens. We went and met, a group of us with Senator Stevens. He told us immediately he wasn't aware of the provision was even in the bill. He was obviously startled by it. He told us he never intended such a thing to be included in the bill. He apologized for its inclusion. I accepted Senator Stevens' word, absolutely. I have always found Senator Stevens to be an honorable and honest member.

We were told that it had been inserted on the House side by representatives of Mr. Istook. That it had been done at a staff level. That they had told other staffers of other members that this had been approved by the front office, whatever that means. That the front office had approved this.

Question: Is that Appropriations Committee office?

Conrad Answer:

They didn't tell us what that meant exactly, the front office. I took it to mean the leadership office in the House side. And that therefore other members' staff had acquiesced. So I can tell you this thing would have become law. This thing would have become law.

Question: Senator, who was it who said this had been approved by the front office? These were staffers for Congressman Istook?

Conrad Answer:

Apparently, that's so. I mean, you know, this is second hand, so it is always hard to

know who they were referring to. But what they said, and this was said on the floor Saturday night, that members' staffs who were the advocates of this position told other members' staffs that this had been approved by the front office.

Question: Is there a legitimate reason for an Appropriations staff to have oversight into peoples' tax returns? Is there a legitimate reason for that?

Conrad Answer:

I don't think so. I can't think of any reason for Appropriations Committee staffers to look at individuals' tax returns. I can understand their need to do oversight over the spending by the IRS, but the spending of the IRS is not revealed in the tax returns of the American people. So, I can't see any possible conceivable reason why members of the Appropriations Committee – they don't deal with tax policy, they deal with the spending of the IRS.

Question: Just to followup on that. If you are at an IRS facility and there happens to be individual tax returns on conveyor belts and on tables and you happen to see one as you walk through, how do you overcome that problem?

Conrad Answer:

That's very simple. You have them in a part of the IRS facility that doesn't have individual tax returns in a place where people can see them. I use to be a tax administrator. This is not difficult. You don't allow people to be in a position to look at individual tax returns.

Question: Do you know under what circumstances Chairman Grassley or Chairman Thomas would look at an individual's tax return?

Conrad Answer:

You know, Senator Grassley said he never has. The only possibility that I could imagine is a circumstance in which there is a pattern of abusive tax practices that somebody might want to look at a return to see how it's being done. In other words, abusive tax shelters, for example, that they might want to look at how it is specifically being done so they can craft legislation to stop it. That's my understanding of why the Chairman of the Finance Committee and the Chairman of the Ways and Means Committee have that authority, but again that is protected by very tough civil and criminal penalties for their release of any of that information. All of those protections were wiped out with this provision.

Question: Senator, as you know as this bill was being drafted the administration sent Congress a letter it wanted spending kept at a certain agreed to level and it would recommend veto to any bill that used gimmicks of any kind to move the money around in such a way to avoid that cap.

In your review of the bill have you found any gimmicks or budget procedures that you would regard as unacceptable?

Conrad Answer:

We have not completed our review. Clearly, there are some gimmicks here, but that's really for another day to talk about that.

Question: Senator, after the omnibus was voted on in the Senate on Saturday, Senator Domenici came to the floor to offer his opinion that perhaps appropriations should happen every two years instead of every year. Do you agree with that idea?

Conrad Answer:

I have not reached conclusion on how we reform this process. But I tell you the one conclusion, and I said to Senator Frist, this can't go on anymore. This bill has got nine bills contained in it. Seven of the nine never went through the Senate process, never were on the floor of the Senate, never were up for amendment, never were up for debate in the United States Senate, and so that's how something like this can happen.

And again, you think just for a moment, whatever their intention was and I don't know it, I do know what could have happened. I do know that they could have – you wrote a story they didn't like, they could have called up your tax return, and without any penalty released it to the public. They could have called up your editor's tax return. They could have called up the owner of your broadcast station or your newspaper or your news service. They could have called up the tax return of anybody that offended them, and they could have released it. Now, I tell you something, if that isn't open to tremendous abuse, I don't know what is.

Question: Senator, you said you wanted to know who at the IRS wrote this provision and held account. Can you expand on that?

Conrad Answer:

It's in the *New York Times* piece today. Mr. Istook's spokespeople say that a representative wrote this provision.

Look, I'm a former tax administrator. There is nobody that deals with tax law that doesn't understand when you start out with this language, "Notwithstanding any other provision of law governing the disclosure of income tax returns or return information..." As soon as you have written that phrase, you have swept aside every law protecting the privacy of American taxpayers. That phrase sweeps aside every protection.

I tell you if we tried to draft such thing with Senate legal counsel I can assure you Senate legal counsel would say to us, do you understand the effect of this? Somebody from the IRS to

draft this they knew what that language meant, if in fact somebody from the IRS did that. That's the claim this morning by those responsible for this. They claim somebody at the IRS drafted it. Who drafted it? I want to know that. Who drafted it? Because there's nobody who has been involved with tax law that doesn't understand what that language means.

Question: Senator, it seems every year now that some omnibus of one size or another, and there are always problems connected with it. What does this say about the viability of the whole appropriations process?

Conrad Answer:

We don't have a budget. The Republicans could not agree on a budget. They were in control of the House and the Senate – never agreed on a budget. Didn't have a budget, didn't meet the appropriations timing requirements, and as a result, you are left with a situation like this when in which nine bills get slapped together and seven of the nine have never even gone through the amendment or review process on the floor of the United States Senate.

Goodness knows what else is buried in this. I think what it tells you is what Senator McCain said. This process is broken. And you know something really seriously bad is going to happen if we permit this to continue. We just dodged a bullet Saturday night.

Question: Who are the targets in your opinion of this proposed legislation. Who were they aiming for?

Conrad Answer:

There is no way I can know that. I don't know. First of all, Senator Stevens said he didn't even know it was there. He's one of the Chairmen. The other Chairman said he would never intend to use it inappropriately.

I believe them, but I think all of us know once somebody has the power, whether it's this group of Chairmen or some subsequent group of Chairmen, at some point they've got the power, and that power is going to get abused. And that's the thing that I think has got to be part of our understanding of what occurred here. I just don't know. They say it was for oversight. Why would you ever need to look at a tax return for appropriations purposes? The spending of the IRS is not revealed in the individual tax returns of Americans or American companies or American groups that file tax returns. There is no need for the oversight by the Appropriations Committee to look at individual tax returns.

Question: Beside calling attention to it what can you do, legislatively or otherwise to get to the bottom of it, to find out who actually is responsible, and what steps to be taken?

Conrad Answer:

I am going to write the head of the IRS today and I am going to ask him did somebody from the IRS draft this, and if so, who, and if so, what was their understanding of what this provision would do, and how could they not have understood what it could lead to, and if that person, if there is such a person, ought to be held to account.

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Question: Senator, just go back on another thing. You said a moment ago why would you ever need to look at tax returns for appropriation purposes. Congressman Istook's subcommittee deals with Treasury and IRS funding, and part of that is the IRS upgrade of its computers, which has gone on, I think, over years and they've had some problems with that. Can you envision any circumstance, under which any kind of language dealing with looking at either limited ways of looking at tax returns, could be related to their oversight responsibility, but making sure that the IRS computer upgrades and its functionality is working or not working? Do you see any links between that responsibility and the language that they attempted to link to the bill?

Conrad Answer:

Look, I'd say this to you. They can go to the Chairman of the Finance Committee and the Chairman of the Ways and Means Committee and ask to get information that they need that relates to tax returns. But that would be under the stringent protections of the criminal and civil penalties that prevent release of that information. For them to write a provision that they could see any tax return and not be governed by the criminal and civil penalties that prevent the release of privacy information, is way beyond the bend.

Question: Why did you vote against the omnibus?

Conrad Answer:

I voted against the omnibus, as I said in my statement, because after spending that day with my staff going over this 3,600 pages and finding a little nugget like we found in there, how do you vote for that? How do you vote for that? How do you know what's in here? It's very clear that the people who were in the room didn't know what was in here. So, I mean, we got a system here that does not work. Thank you.